

REMARKS

In the latest action, the Office makes the following statement with respect to the PAJ reference: *This reference was cited as an X reference in the international search report.* This statement is correct. However, the undersigned has been informed that in the International Preliminary Examination Report which was issued by the same Examiner who issued the International search Report, the Examiner acknowledged patentability of claims 1-12 as originally filed. The undersigned has been informed that the IPER contains the following observations with regard to PAJ (D1):

- "D1 and D2 are considered the closest prior art. They disclose pourable oil-in-water emulsions to be used as frying composition. According to D1 and D2 the disclosed emulsions show reduced spattering of the oil and water during frying. The emulsions in D1 and D2 however differ from the present invention in that the oil content in D1 and D2 is lower, i.e., 10-50 wt. % oil and/or fat. Accordingly, the subject-matter of claims 1-12 is novel (Art 33(2) PCT).
- "The frying composition defined in the present application is an alternative to the composition of D1 and D2. It is considered not obvious since D1 and D2 do not contain any suggestion which would incite the man skilled in the art to further increase the oil content of the emulsion and there is no indication that such an increase would still provide good anti-spattering and stability properties. In the prior art there is no further teaching of frying compositions of the oil-in-water type having an oil content of above 50 wt. %. On the contrary such frying compositions are generally of the water-in-oil type (e.g. margarines, cf. D4, D5 and D7.)"

The undersigned has been informed that present claim 1 differs from claim 1 referred to in the above IPER in that it additionally recites the following features:

- a) Bostwick value at 15°C of at least 5
- b) 0.1 to 5 wt. % salt
- c) 0.05 to 2 wt. % lecithin
- d) 0.35 to 5 wt. % of at least one emulsifier having a HLB of at least 7
- e) Fat being dispersed in a water phase as droplets that have an average droplet size of less than 8 μm

As regards feature b), the Office has implicitly acknowledged that PAJ does not mention salt, but according to the Office one of ordinary skill in the art would expect that the stir-fry is liberally treated with soy sauce, a rich source of salt. According to the Office, to add or subtract salt from a seasoning product would have been an obvious way to modify the salt to taste. As regards feature d) the Office observes: *Applicant argues that PAJ teaches away from using more than 0.3 wt. % emulsifier. This is disagreed with because page 5 appears to state just the opposite.*

The latter statement is not understood as the discussion at the top of page 5 of the computer translation of PAJ appears to be part of a discussion of the disadvantages of going outside the 0.03-0.3% range (see, e.g. last eight lines of page 4). In any event, the Office fails to point to a clear teaching by PAJ of emulsifier within Applicants' range.

Likewise, PAJ clearly appears to teach that the fat content of the seasonings disclosed therein should not exceed 50 wt. % (see paragraph [0014].)

Consequently, the subject matter of present claim 1 appears to differ from the general teachings of PAJ in that the claimed pourable, water continuous frying composition of

the present application comprises (i) more than 50 and up to 80 wt. % fat, (ii) 0.1-5 wt. % salt and (iii) 0.35-5 wt. % emulsifier. It can only be argued with the benefit of hindsight that it would have been obvious for a skilled person to modify the seasonings taught by PAJ by simultaneously (i) increasing the fat level to above 50 wt. %, (ii) provide an emulsifier content of at least 0.35 wt. % and (iii) incorporating at least 0.1 wt. % of salt.

The Office has argued that when the seasoning of PAJ is employed during stir frying other ingredient such as oil and salt-containing ingredients may be added, thus yielding a composition according to present claim 1. However, this reasoning fails to take account of the fact that the aforementioned seasoning is presumably only a component in the stir fry blend. Consequently, even if the Examiner's reasoning were followed and it is assumed that during stir frying the seasoning of PAJ is combined with oil and salt or salt-containing ingredients, it may equally be assumed that the stir fry blend includes a variety of other ingredients, notably the main food raw material. Thus, the resulting stir fry blend will presumably differ from the pourable, water continuous frying composition of present claim 1 in that the fat content and emulsifier content may be well below the minimum levels cited in present claim 1. In addition, it is unclear why this stir fry blend would meet the requirement of a Bostwick value at 15°C of at least 5 and an average oil droplet size of less than 8 µm. At best, the Office is speculating about what could possibly happen rather than looking to what one of ordinary skill is taught (i.e. would be obvious) in view of the reference. Thus, it is submitted that the subject matter of present claim 1 is not obvious vis-à-vis the teachings of PAJ.

The process of preparing such a pourable frying composition as defined in present claim 10 and the process for preparing a foodstuff by shallow frying, using a pourable

frying composition as defined in claim 1 are patentable for the reasons given in connection with claim 1.

The undersigned is endeavoring to obtain a copy of the IPER and will furnish same to the Office upon receipt.

In view of the foregoing, Applicants request the Examiner to reconsider the rejection and now allow the claims.

Respectfully submitted,



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